

14291-D

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ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
URBAN A. LESTER

December 31, 1996

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are two (2) copies of an Assignment and Assumption Agreement, dated as of December 31, 1996, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Lease Agreement and secondary documents previously filed under Recordation Number 19291.

The names and addresses of the parties to the enclosed document are:

Assignor: JAIX Leasing Company  
980 North Michigan Avenue  
Chicago, IL 60611

Assignee: The CIT Group/Equipment Financing, Inc.  
1211 Avenue of the Americas  
New York, NY 10036

A description of the railroad equipment covered by the enclosed document is set forth on Appendix 2 attached thereto.

*Q. Williams*  
*December 31, 1996*

Mr. Vernon A. Williams  
December 31, 1996  
Page 2

Also enclosed is a check in the amount of \$22.00 payable to the order of the  
Surface Transportation Board covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Robert W. Alvord', followed by a horizontal flourish.

Robert W. Alvord

RWA/bg  
Enclosures

SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C. 20425-0001

12/31/96

Robert W. Alvord  
Alvord And Alvord  
918 Sixteenth Street, NW., Ste.200  
Washington,DC., 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of  
the Interstate Commerce Act, 49 U.S.C. 11303, on 12/31/96 at 11:15AM , and  
assigned recordation number(s). 19291-D.

Sincerely yours,

Vernon A. Williams  
Secretary

Enclosure(s)

\$ 22.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



19291-D

### ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement, dated as of December 31, 1996, is between JAIX Leasing Company ("Assignor"), a Delaware corporation, and The CIT Group/Equipment Financing, Inc. ("Assignee"), a Delaware corporation.

#### RECITALS

WHEREAS, Assignor and Assignee have entered into a Purchase Agreement dated as of December \_\_, 1996 (the "Purchase Agreement"), pursuant to which Assignor shall sell, assign, transfer and convey to Assignee, and Assignor shall purchase, receive and accept, all of Assignor's right, title and interest in and to the railcar equipment described in Appendix 2 hereto (the "Railcars"; the Operative Documents and the Railcars hereinafter collectively referred to as the "Owner Interests").

WHEREAS, Assignor desires to transfer to Assignee all of its right, title and interest in and to the Railroad Equipment Lease dated as of January 23, 1995 between JAIX Leasing Company (as assignee of Johnstown America Corporation), as Lessor and Canadian National Railway Company, as Lessee and Rider 1 thereto dated January 23, 1995 and Rider 2 thereto dated December 1, 1996 (collectively the "Lease") and all other operative documents described in Appendix 2 hereto collectively referred to as the "Operative Documents" and referred to with the Railcars as the "Owner Interests").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Assignment of Owner Interests. Assignor hereby sells, assigns, transfers and conveys to Assignee, as of the date hereof, free and clear of all liens, claims and encumbrances, all its right, title and interest in, to and under the Owner Interests; and Assignee hereby accepts and receives all such right, title and interest in, to and under the Owner Interests, excluding any claim, cause of action, liability or obligation of any nature or description or other right to payment accruing, arising or relating to any period on or prior to the date hereof or payable by reason of any act, event or omission occurring or existing on or prior to the date hereof, whether known or unknown, contingent or otherwise, as of the date hereof and excluding all of Assignor's obligations under Section 5.2 of the Lease with respect to Assignor's obligation to indemnify Lessee under the Lease against any judgment for damages and cost as a

result of any alleged infringement of any United States patent by any Car and the warranty indemnities of Johnstown America Corporation ("JAC") contained in Section 5.01 with respect to the Cars, which warranty remains the obligation of JAC and not Assignee (the "Excluded Obligations") to have and to hold the same unto Assignee, its successors and assigns, forever.

Section 2. Assumption of Liabilities. Upon the execution and delivery of this Agreement, Assignee shall be deemed to be the Lessor for all purposes of the Lease, and each reference in the Lease to "Lessor" shall thereafter be deemed to be Assignee except with respect to the Excluded Obligations, which remain the obligation of JAC with respect to the warranty in Section 5.01 of the Lease and the obligation of Assignor with respect to the patent indemnity in Section 5.02 of the Lease. Assignee assumes, with respect to the periods after the date hereof, all of the duties and obligations of Assignor hereafter accruing or arising incident to the Owner Interests other than with respect to the Excluded Obligations. Assignee confirms, with respect to the periods after the date hereof, that as of the date hereof it shall be deemed a party to the Owner Interests hereto to which Assignor is a party, and Assignee agrees to be bound by all the terms of, and to undertake all such obligations of, Assignor contained therein arising after the date hereof other than with respect to the Excluded Obligations which Assignor confirms remain its obligation.

Section 3. Exception. Notwithstanding the foregoing Assignor remains fully liable for, and Assignee is not assuming Assignor's obligations to indemnify the Lessee under the Operative Documents for any alleged patent infringement in accordance with the provisions of Section 5.2 of the CN Lease (as defined in the Operative Documents) or for any breach of the warranty provisions of Section 5.1 of the CN Lease with respect to the Cars.

Section 4. Notices. Any notices provided for in the Lease shall be delivered to Assignee at the following address or such other place as Assignee may designate in accordance with the Lease:

The CIT Group/Equipment Financing, Inc.  
1211 Avenue of the Americas  
20th Floor  
New York, New York 10036

Attention: Manager - Rail Group

Section 5. Headings. The headings of the Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 6. Governing Law. THIS AGREEMENT SHALL IN ALL RESPECT BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS (OTHER THAN TITLE 14 OF ARTICLE 5 OF THE GENERAL OBLIGATIONS LAW).

Section 7. Definitions. Capitalized terms used herein without definition shall have the meanings given them in the Purchase and Sale Agreement described in Section 9 below.

Section 8. Execution in Counterparts. This Agreement and any amendments, waivers or consents hereto may be executed by Assignor and Assignee in separate counterparts (or upon separate signature pages bound together into one or more counterparts), each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument.

Section 9. Purchase and Sale Agreement. The rights and obligations of the parties hereto are subject to the terms and conditions of that certain Purchase and Sale Agreement dated as of December 31, 1996 between Assignor and Assignee (the "Purchase and Sale Agreement").

Section 10. Recordation. Assignor hereby authorizes the recordation of this Agreement and hereby agrees to execute such further documentation as Assignee may reasonably request in order to carry out the purposes of this Agreement.

Section 11. Miscellaneous. Each party to this Agreement shall execute and deliver such instruments, documents and other written information and take such other actions as the other party may reasonably require in order to carry out the intent of this Agreement. This Agreement and all the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. This Agreement shall be construed in accordance with the laws of the State of New York without regard to its conflict of laws doctrine.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement.

JAIX LEASING COMPANY

By: 

Its: David W. Riesmeyer  
Treasurer  
JAIX Leasing Company

THE CIT GROUP/EQUIPMENT FINANCING, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ILLINOIS

)

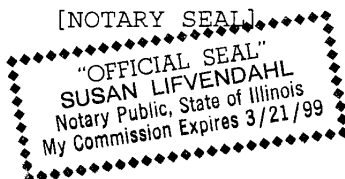
) SS:

COUNTY OF COOK

)

On this 27th day of December, 1996, before me personally appeared David Reesmaier to me personally known, who being duly sworn, says that he is a Treasurer of JALX LEASING COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Susan Lifvendahl  
Notary Public



\_\_\_\_\_  
My Commission Expires:

STATE OF NEW YORK

)

) SS:

COUNTY OF NEW YORK

)

On this \_\_\_\_ day of December, 1996, before me personally appeared \_\_\_\_\_, to me personally known, who being duly sworn, says that she is a \_\_\_\_\_ of THE CIT GROUP/EQUIPMENT FINANCING, INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARY SEAL]

\_\_\_\_\_  
My Commission Expires:



IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement.

JAIX LEASING COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

THE CIT GROUP/EQUIPMENT FINANCING, INC.

By: *Patricia Medina*

Its: *Senior Vice President*

STATE OF ILLINOIS

)

) SS:

COUNTY OF COOK

)

On this \_\_\_\_ day of December, 1996, before me personally appeared \_\_\_\_\_, to me personally known, who being duly sworn, says that he is a \_\_\_\_\_ of JAIX LEASING COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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 Notary Public

[NOTARY SEAL]

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 My Commission Expires:

STATE OF NEW YORK

)

) SS:

COUNTY OF NEW YORK

)

On this 27th day of December, 1996, before me personally appeared Victoria McMahon, to me personally known, who being duly sworn, says that she is a Senior Vice President of THE CIT GROUP/EQUIPMENT FINANCING, INC., that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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*Katharine T. Scheffler*  
 Notary Public

[NOTARY SEAL]

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6/29/98  
 My Commission Expires:

KATHARINE T. SCHEFFLER  
 Notary Public, State of New York  
 No. 4994527  
 Qualified in New York County  
 Commission Expires April 6, 1998  
6/29/98

## APPENDIX 1

### OPERATIVE DOCUMENTS

Except as set forth herein, all right, title and interest of JAIX Leasing Company ("Assignor") in, to and under the following Operative Documents:

1. Railroad Equipment Lease, dated as of January 23, 1995 (the "Lease"), by and between Assignor (as assignee of Johnstown America Corporation), as lessor, and Canadian National Railway Company, as lessee (the "CN Lease").
2. Rider 1 to the Lease, dated January 23, 1995 ("Rider 1").
3. Memorandum of Lease Agreement, dated as of January 23, 1995, relating to the Lease and Rider 1, which Memorandum was recorded with the Surface Transportation Board on March 13, 1995 and assigned Recordation Number 19291 and was recorded with the Registrar General of Canada on March 16, 1996.
4. Certificate of Acceptance dated June 29, 1995 executed by Canadian National Railway Company with respect to a delivery of Cars on June 1, 1995 under the Lease.
5. Rider 2 to the Lease, dated December 1, 1996 ("Rider 2").
6. Memorandum of Lease Agreement, dated as of December 1, 1996, relating to the Lease and Rider 2, which Memorandum was recorded with the Surface Transportation Board on December 30 and assigned Recordation Number 19291-C and was recorded with the Registrar General of Canada on December 30, 1996.

**APPENDIX 2****DESCRIPTION OF RAILCARS**

345 Aluminum BethGon Coalporter railcars manufactured by  
Johnstown America Corporation and bearing road marks and numbers:

CNA 193645	-	CNA 193652 (inclusive)
CNA 193655	-	CNA 193769 (inclusive)
CNA 193772	-	CNA 193847 (inclusive)
CNA 193849	-	CNA 193925 (inclusive)
CNA 193927	-	CNA 193931 (inclusive)
CNA 193933	-	CNA 193957 (inclusive)
CNA 193960	-	CNA 193998 (inclusive)